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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 257

HENRY J. JONES,

Petitioner,

against

LYKES BROS. STEAMSHIP CO., INC.,

Respondent.

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CHARLES ANDREWS ELLIS,
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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This Court denied certiorari herein on October 19, 1953; and this petition for rehearing is filed pursuant to Rule 33, par. 2, of the Rules of this Court.

This case is unusual in that the importance of a review now of the questions it presents has been enhanced rather than diminished by this Court's denial of certiorari. The petition covered in detail the confusion and conflicts existing and the manifest fundamental error in reversing plaintiff's recovery and dismissing the complaint*, but failed

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* The Court did not order a new trial, but reversed and dismissed the complaint, although giving no consideration to the theory on which plaintiff had relied at trial.

to communicate effectively to this Court what we understand to be the gravely apprehended actual practical effect of the decision at this time of national peril, upon:

1. All American seamen as distinct from petitioner alone;

2. All American shipowners and the American merchant marine as distinct from respondent alone; and

3. National defense and all patriotic Americans and the nation as a whole.

The Special Importance of a Review of the Questions at this Time of National Peril

The decision means to every seaman shipping on American vessels that he must rely on self protection and individually must overcome and beat down (and must assume individually the risk of being unable personally to overcome and beat down) any unprovoked assault by another seaman during the time and in the quarters statutorily assured to him for rest between watches on shipboard; and that he must suffer the tragic consequences of such an unprovoked assault without recourse in damages.*

To every American seaman this means that unless he be sure that he physically is more powerful than any fellow seaman aboard ship (and particularly more powerful than any fellow seaman assigned or having access to his quarters), he must either: (1) criminally or otherwise arm himself beforehand with gun or knife and use them to defend himself when attacked in quarters, or (2) quit his calling, or (3) obey or suffer whatever demands or imposi-

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* The Court below admittedly was obliged to employ novel reasoning and distinctions to so rule and reverse the District Court.

tions a more powerful fellow seaman may make upon him; or (4) suffer being crippled for life (or possibly being killed) by ruthless and unrelenting brute assault in his quarters without provocation, without protection and without recourse.

It means that if threatened, imposed upon or molested on shipboard—where police are not available as on shore—he may not and dare not speak of it to an officer lest to so "complain" to a superior make the other seaman "angry" and serve to license as a private "sailors' brawl" an unprovoked assault upon him in his quarters without protection and without recourse.

To every American seaman this means also that the Jones Act (46 U. S. C. § 688) has added nothing in assault cases, except to place the seaman (and conscientious officers as well) in a worse trap than under ancient maritime law. If assaulted by an "officer" he can recover damages, but if assaulted by an "employee", this decision holds, he has no recourse unless the owner personally or an officer has taken part—although the statute uses "officers, agents or employees" in the same liability phrase* (45 U. S. C. §§ 51, 54, by ref.—of Title 46 U. S. C. § 688).

Safety of American shipping requires that a seamen obey officers. But this decision means that his own physical self preservation will require that he obey any stronger fellow seaman on board ship; and that even officers will have to rely on crew fear of the strongest fellow seaman aboard ship rather than on their own official authority to secure obedience to orders.

A decision more demoralizing to the waterfront and merchant marine and consequently dangerous to national

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* Manifestly no one except the perpetrators can ever know whether the fellow seaman committing the unprovoked assault acted *sua sponte* or at the instance of an officer.

defense and welfare in these days of national peril could hardly be imagined. Plaster the waterfront with copies of this decision, reproducing verbatim the Second Circuit's own reasoning and language, backed by this Court's solemn denial of certiorari, and discipline as well as patriotism aboard ships of the American merchant marine will be greatly impaired.

This would be gravely serious to the nation in normal times; in these days of national peril its seriousness is immeasurable. Every American seaman becomes (and the ship upon which he serves thereby becomes) a sitting duck for demoralization and possibly even enemy agent control if but one efficient Communist gorilla be placed on board as an "employee", instructed by the Communist enemy to utilize for crew control or other enemy action assault and fear of assault in quarters without recourse—with this decision as highest American authority for instilling such fear. Communist enemy agents will be able to exploit even without added interpretation the reasoning, phraseology and result of the decision to strike fear and disillusion among the crews of American vessels, with the decision serving as a more effective weapon for this than any they could devise.

The result of now treating the erroneous decision of this humble negro seaman's case as having no present actual, practical effect of importance might prove more disastrous than Pearl Harbor; whereas a few hours devoted by this Court to correcting now the manifest error of the decision below will not only remove that danger but restore and clarify for the entire merchant marine the law as written in the Shipping code and Jones Act as heretofore interpreted by this Court.

Wherefore petitioner prays for a rehearing, and that upon such rehearing a writ of certiorari be granted.

Respectfully submitted,

CHARLES ANDREWS ELLIS,
Counsel for Petitioner.

SILAS BLAKE AXTELL,
CHARLES ANDREWS ELLIS,
MARTIN G. STEIN,
Of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to grounds specified in Rule 33, par. 2 of the Rules of this Court.

Dated, October 29, 1953.

CHARLES ANDREWS ELLIS,
Counsel for Petitioner.